

Constitutional Foundations



Class Readings

The Declaration of Independence July 4, 1776

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.-- That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.--Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.
He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.
He has affected to render the Military independent of and superior to the Civil power.
He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:
For Quartering large bodies of armed troops among us:
For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:
For cutting off our Trade with all parts of the world:
For imposing Taxes on us without our Consent:
For depriving us in many cases, of the benefits of Trial by Jury:
For transporting us beyond Seas to be tried for pretended offences
For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:
For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:
For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.
He has abdicated Government here, by declaring us out of his Protection and waging War against us.
He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.
He is at this time transporting large Armies of foreign Mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.
He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.
He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

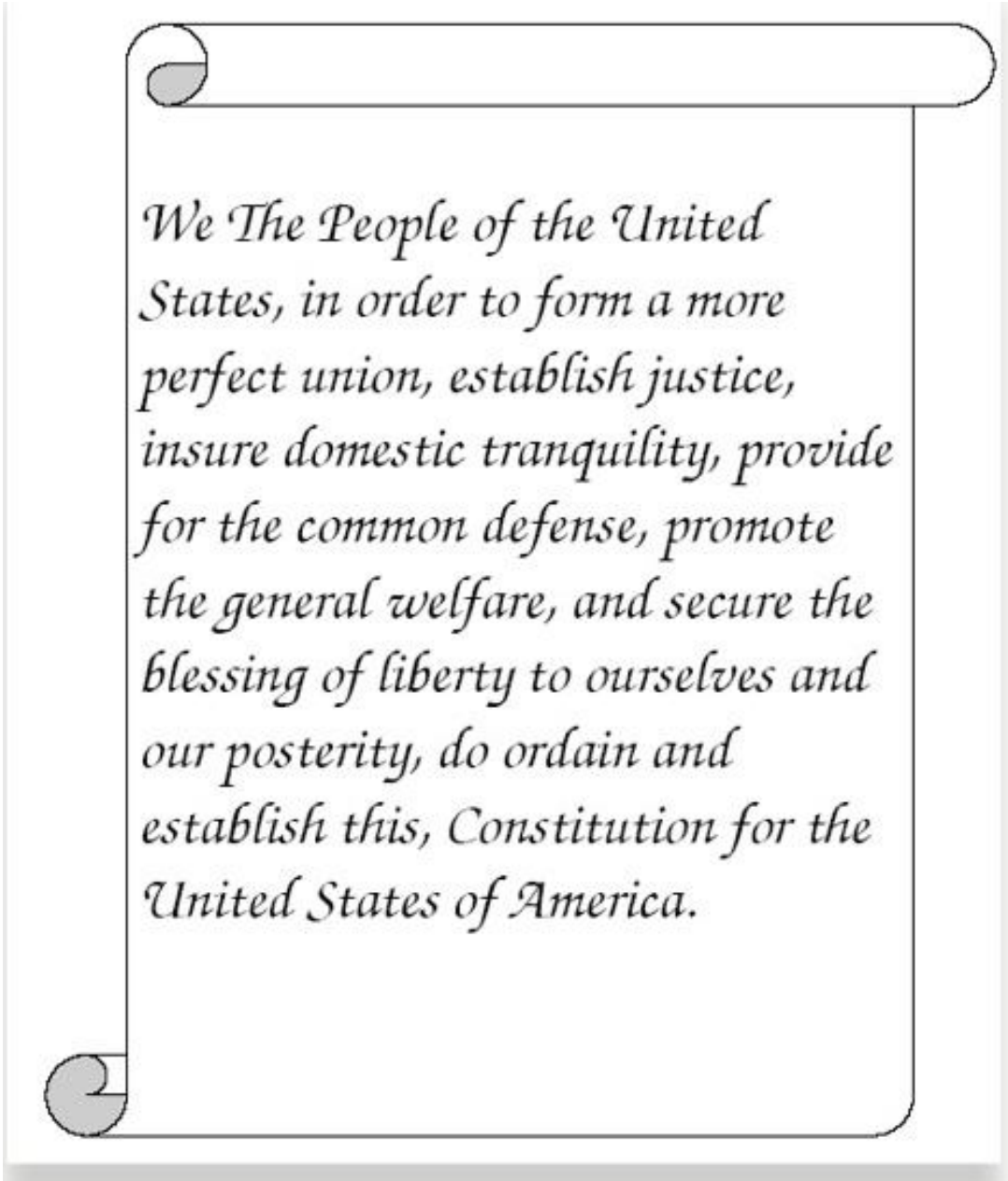
Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by

Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

Preamble to the Constitution of the United States

September 17, 2012



We The People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessing of liberty to ourselves and our posterity, do ordain and establish this, Constitution for the United States of America.

Bill of Rights

Amendment I *Freedom of Religion, Speech, Press, Assembly, and Petition*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof (refers to *freedom of worship*); or abridging (reducing) the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress (correction) of grievances.

Amendment II *Right to Bear Arms*

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed (weakened).

Amendment III *Quartering of Troops*

No soldier shall, in time of peace, be quartered (assigned to live) in any house without the consent of the owner; nor in time of war; but in a manner to be prescribed by law.

Amendment IV *Searches and Seizures*

The right of the people to be secure (safe) in their persons, houses, papers, and effects (belongings) against unreasonable searches and seizures shall not be violated; and no (search) warrants shall issue but upon probable cause (means a *reasonable ground of suspicion*) supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V *Rights of the Accused; Property Rights*

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury (refers to *serious offenses punishable by death or by imprisonment*. Before someone may be tried for such a crime, a grand jury must decide that sufficient evidence exists to bring that person to trial), except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; (a person may not be tried twice for the same offense – double jeopardy) nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law (means proper legal procedure); nor shall private property be taken for public use without just compensation (the government has the power of eminent domain, or the right to take private property for public use. This provision requires the government to pay the owner a fair price for such property).

Amendment VI *Other Rights of the Accused*

In all criminal prosecutions (trials), the accused shall enjoy the right to a speedy and public trial by an impartial (fair) jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor (*the accused person has the right to request the court to issue an order or subpoena, compelling a witness to appear in court*) and to have the assistance of counsel for his defense.

Amendment VII *Civil Suits*

In suits at common law (common law based on custom and precedent (past decisions made in similar cases; It was brought to the English colonies by the early settlers and became the foundation of the American legal system) where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII *Bails, Fines, and Punishments*

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX *Rights Not Listed*

The enumeration (listing) in the Constitution of certain rights shall not be construed (interpreted) to deny or disparage (weaken) others retained by the people.

Amendment X *Powers Reserved to the States and People*

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

What was Shay's Rebellion?

Rebellion, as the Founding Fathers would quickly discover, could be a catchy tune. Besides independence, the end of the war had brought economic chaos to America. As with most wars, the Revolution had been good for business. Everyone works, soldiers spend money, factories turn out ships and guns, armies buy supplies. That's the good news. The bad news is that after the war comes inflation and depression. The years immediately following the Revolution were no different. America went through bad economic times. Established trading patterns were in disarray. Under the Articles of Confederation, Congress had no power to tax. In the 13 states, where power was centered, the separate currencies had created an economic shambles.

While the situation was bad almost everywhere, in Massachusetts, the home of the Adamses and birthplace of the patriot cause, the economic dislocation boiled over into bloodshed between Americans. Like the prewar Bacon's Rebellion, the Regulator Movement in the Carolinas, and the Paxton Boys of Pennsylvania, this "little rebellion," as Thomas Jefferson called it, was a sign of serious class conflict, a symptom of the economic tension that had always existed in America between, on one side, the working-class frontier farmers, inner-city laborers, the servant class, smaller merchants, and free blacks, and on the other side the "haves," the landed, slaveholding gentry, and the international merchants of the larger cities.

Massachusetts passed a state constitution in 1780 that found few friends among the poor and middle class, many of them veterans of the Continental Army still waiting for promised bonuses. When they learned that they were now barred from voting and holding office, they must have wondered what they had been fighting for. As the economy worsened, many farms were seized to pay off debts. When the local sheriffs looked to the militia to defend the debt courts against angry crowds, the militia sided with the farmers.

In the summer of 1786, an army veteran named Daniel Shays emerged on the scene. With 700 farmers and working-class people, Shays marched on Springfield and paraded around town. Onetime radical Sam Adams, now part of the Boston establishment, drew up a Riot Act, allowing the authorities to jail anyone without a trial. Revolt against a monarch was one thing, said Adams, but against a republic it is a crime punishable by death.

Shay's soon had a thousand men under arms and was marching on Boston, the seat of wealth and power. Then General Benjamin Lincoln, one of Washington's war commanders, brought out an army paid for by Boston merchants. There was an exchange of artillery fire, leaving some casualties on both sides, and Shay's army scattered. Lincoln's army pursued the rebels, but refrained from attacking when the rout was assured. A harsh winter took its toll, and Shay's amateur army disintegrated. Some of the rebels were caught, tried, and hanged. Others were pardoned. Shays, on the run in Vermont, was pardoned, but died in poverty in 1788.

Writing from the safe distance of Paris, Thomas Jefferson said of the uprising, "A little rebellion now and then is a good thing . . . God forbid that we should ever be 20 years without such a rebellion . . . The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants."

Lacking cohesion and stronger leadership, the Shaysites disintegrated. However, several of the reforms they had demanded were made, including the end of the state's direct taxation, reduced court costs, and the exemption of workmen's tools and household necessities from the debt process.

Davis, Kenneth C. Don't Know Much About History. Harpur Collins; New York, 2003. P. 109-111

Critical Thinking Questions for Compromises of the Constitution

Background information on Critical Thinking Question A:

The delegates to the Constitutional Convention had a very difficult time deciding how many representatives each state would get in the new Congress. The large states felt the representation, or the number of elected officials in Congress each state gets, should be based on a state's population. They felt that states with more people deserved more representatives in Congress. Small states, on the other hand, believed all states should be treated equally under the Constitution. They wanted all states, regardless of population, to have the same number of representatives. This caused a great deal of tension and debate between representatives from large states and small states during the Constitutional Convention. It was a difficult problem for them to solve.

Critical Thinking Question A: If you were delegates to the Constitutional Convention, what do you think would be the best way to resolve the problem of representation in Congress? Rank the following four choices from 1 (best choice) to 4 (worst choice)

- A. Have representation in Congress based on population.
- B. Have an equal number of congressmen from each state.
- C. Create a Congress with two parts. Have representation for one part based on a state's population, and representation for the other part based on an equal number of representatives.
- D. Redraw the boundaries of the states so that the population is equal in all states

Background information on Critical Thinking Question B

Delegates from Northern and Southern states at the Constitutional Convention disagreed on how slaves should be counted in the population. (Remember, slavery in the South was very prominent, but not in the North). The population of a state was very important for two reasons: 1) It determined how many representatives a state would get in the House of Representatives, and 2) it determined how much tax would be paid by the state to the federal government. Thus, whether slaves were to be counted in the population would have a major impact on a state's power in Congress and on the amount of tax a state would have to pay.

The Southern delegates proposed that slaves be counted in the population to determine representation, but not counted for the purpose of figuring out taxes. This clearly worked to the Southern states' advantage because they would have more power in Congress, but would have to pay less tax. The Northern delegates strongly opposed the plan. They argued that slaves were considered property by the owners, and therefore should be counted for taxes but not for representation in Congress. This plan was exactly the reverse of what the South wanted. This presented a difficult problem for the delegates to resolve.

Critical Thinking Question B: If you were delegates to the Constitutional Convention, what do you think would be the best way to resolve the problem of how to count slaves in the population?

Rank the following four choices from 1 (best choice) to 4 (worst choice)

- A. Let each state with slaves decide whether they are to be counted in the population or not. The population counts, whether they included slaves or not, would be used for both representation in Congress and for tax purposes.
- B. Count slaves as 3/5 of a person for population
- C. Count slaves for taxes but not representation until 1820, after which they will be counted for both.
- D. Count slaves for representation but not for taxes until 1820, after which they will be counted for both.

Background information on Critical Thinking Question C

Two other sources of conflict between the Northern and Southern delegates also involved slavery. First, the delegates faced a difficult decision about whether to allow slave trading in the United States. Southerners did not want Congress to be able to make laws concerning business and trade because they feared that Congress might outlaw the slave trade. Northerners, on the other hand, wanted Congress to be able to pass laws that would help business and manufacturing.

In addition, Northern and Southern delegates argued over what should happen to runaway slaves. Southerners believed that since slaves were property, runaways to the North should be returned to their owners. Northerners thought that slaves who ran away to free territory ought to be allowed to remain free. These were difficult problems for the delegates to resolve.

Critical Thinking Question C: If you were delegates to the Constitutional Convention, what do you think would be the best way to resolve the problem of how to count slaves in the population?

Rank the following four choices from 1 (best choice) to 4 (worst choice)

- A. Do not allow Congress to stop slave trading for 20 years. Runaways to free territory are not free since they are considered by law to be property.
- B. Allow Congress to restrict slave trading. Runaways to free territory can be claimed by their owners, but Northern officials are not forced by law to return slaves themselves.
- C. Allow Congress to restrict the slave trade. Runaways to free territory must be returned to their owners.
- D. The Constitution should make no decisions about these issues. Leave it to individual states to decide what to do about these matters.

Background information on Critical Thinking Question D

The delegates who met at the Constitutional Convention disagreed over the shape of the Executive Branch. The power and shape of the Executive Branch was important to the delegates as a result of their own experiences under King George. All of the delegates feared an oppressive Executive Branch, but none wanted the other extreme (lack of a central authority) which they had experienced under the Articles of Confederation. Several questions concerning the Executive Branch arose such as: How long should the Executive stay in office? How many people should assume the office? How should the Executive Branch be elected?

Critical Thinking Question D: If you were delegates to the Constitutional Convention, what would you think would be the best way to resolve the problem of how to shape the Executive Branch?

Rank the following four choices from 1 (best choice) to 4 (worst choice)

- A. Have three people assume the role of the Executive Branch, have them serve for life and allow Congress to elect them.
- B. Have only one person assume the role of the Executive Branch, have the individual only serve for one year, and allow the people to directly elect him.
- C. Have two people assume the role of the Executive Branch, have them serve for life and allow the people to directly elect them.
- D. Have one person assume Executive Branch, have them serve a four-year term and allow the people to indirectly elect them through a system called the Electoral College.